

ROBERT J DENORIS,  
Plaintiff,  
v  
JO ANNE B BARNHART,  
Commissioner of Social Security,  
Defendant.

# I

Eligibility for a fee award under the EAJA requires that  
(1) the applicant be a prevailing party; (2) the government's

1 position was not substantially justified; (3) no special  
2 circumstances make an award unjust; and (4) pursuant to 28 USC §  
3 2412 (d)(1)(B), any fee application be submitted to the court  
4 within 30 days of final judgment in the action and be supported by  
5 an itemized statement. Commissioner, Immigration & Naturalization  
6 Service v Jean, 496 US 154, 158 (1990). Here, defendant Jo Anne B  
7 Barnhart does not dispute plaintiff's eligibility for a fee award.  
8 Having reviewed the case, the court finds that plaintiff has met  
9 all four requirements and thus is eligible for an attorney's fee  
10 award under the EAJA. The only remaining issue is whether the  
11 requested amount of award is reasonable.

12 In determining a reasonable award, a district court may  
13 consider "the number of hours reasonably expended on the  
14 litigation" and a "reasonable hourly rate." Sorenson v Mink, 239  
15 F3d 1140, 1145 (9th Cir 2001) (quoting Hensley v Eckerhart, 461 US  
16 424, 433 (1983)); See also 28 USC 2412(d)(1)(B) (requiring attorney  
17 to submit a detailed, "itemized statement \* \* \* stating the actual  
18 time expended and the rate at which fees and other expenses were  
19 computed"). The hourly rate is capped "in the mine run of cases"  
20 at \$125 per hour, subject to an upward adjustment for inflation.  
21 Gisbrecht v Barnhart, 535 US 789, 796 (2002) (citing 28 USC §  
22 2412(d)(2)(A)). But a larger award may be granted if the court  
23 "determines that an increase in the cost of living or a special  
24 factor, such as the limited availability of qualified attorneys for  
25 the proceeding involved, justifies a higher fee." 28 USC §  
26 2412(d)(2)(A)(ii).

27 A district court retains substantial discretion. Jean, 496  
28 US at 161-63. For instance, the district court may reduce the

1 amount of attorney fees if the prevailing party "unduly and  
2 unreasonably protracted the final resolution of the matter in  
3 controversy" or if the party's fee application is "[e]xorbitant,  
4 unfounded, or procedurally defective." Id at 163. Also, attorney  
5 hours may be reduced if the court determines that the case was  
6 "overstaffed." Hensley, 461 US at 434. The burden of documenting  
7 the number of hours reasonably expended falls on the fee applicant.  
8 Hensley, 461 US at 433, 437.

## 10 II

11 Plaintiff's attorney, Harvey P Sackett, requests an award of  
12 \$6,500.87 for attorney's fees and \$157.40 for costs. Doc #24,  
13 Attachment 2. Sackett's claim for attorney's fees is based on an  
14 hourly rate of \$163.75 and the total 39.7 hours he declares he spent  
15 on this appeal (including the time he spent litigating his request  
16 for EAJA fees, id at 9). Id, Attachment 1. Defendant does not  
17 dispute the reasonableness of either Sackett's hourly rate or his  
18 request for \$157.40 for costs. Having reviewed the evidence  
19 presented by Sackett, id, the court finds that \$163.75 reflects an  
20 appropriate cost of living adjustment of the \$125 statutory hourly  
21 rate, 28 USC § 2412(d)(2)(A), because Sackett has correctly followed  
22 the method suggested by the Ninth Circuit in Sorenson, 239 F3d at  
23 1148. The court also finds the \$157.40 in costs, which includes the  
24 filing fee, photocopying costs and postage, reasonable.

25 The court next turns to the issue of the number of hours  
26 expended, the only disputed issue regarding plaintiff's EAJA fee  
27 application. Sackett has presented the court with a detailed,  
28 itemized statement, indicating the amount of time he spent for

1 rendering each legal service. Doc #22, Attachment 2 at 2-3.  
2 Defendant argues that the 24.3 hours Sackett allegedly spent in  
3 preparing a twenty-six-page memorandum in support of plaintiff's  
4 motion for summary judgment, Doc #13, and a four-page response to  
5 defendant's cross-motion, Doc #17, was "excessive" and thus should  
6 be reduced by one-half to 12.15 hours. Opp at 6.

7 Defendant argues in opposition that the case involved  
8 routine, "non-complex" issues, and that Sackett was so "intimately  
9 familiar" with the field of social security disability benefit law  
10 and the particular issues in this case that he did not need a great  
11 deal of time to prepare a couple of briefs. Opp at 3-5 (citing Kerr  
12 v Screen Extras Guild, Inc, 526 F2d 67, 69-70 (9th Cir 1975)  
13 (suggesting that in determining reasonable attorney hours, a  
14 district court may consider *inter alia* the complexity of the case,  
15 the novelty of the issues, the attorney's expertise and skill, and  
16 the disposition of the appeal)).

17 The court recognizes both the non-complex nature of this  
18 case and Sackett's apparent expertise in the field of social  
19 security law. The court, however, is not convinced that those  
20 factors in any significant way make 24.3 hours an excessive amount  
21 of time for the two briefs on this appeal with thirty pages in  
22 total. Doc #13; Doc #17.

23 Defendant presents a line of social security cases in which  
24 district courts reduced the number of attorney hours. Opp at 4-6.  
25 See e g, Gisbrecht v Apfel, 238 F3d 1196 (9th Cir 2000) (holding  
26 that the amount of attorney hours expended on the cases was more  
27 than would be expected of practitioners claiming the right to  
28 increased hourly rates based on increased knowledge of and

1 specialization in the social security area); Vanover v Chater, 946 F  
2 Supp 744 (E D Mo 1996) (holding petitioner's claim of 42 hours  
3 excessive for a routine social security disability case); Nugent v  
4 Massanari, 2002 WL 356656 (N D Cal 2002) (calling forty pages and  
5 28.8 hours excessive considering the attorney's expertise in social  
6 security matters); Sandine v Social Security Administration, 1999 WL  
7 717823 (D Or 1999) (reducing attorney hours in EAJA fee petition due  
8 to non-complex legal issues).

9         These cases, while relevant, do not support defendant's  
10 conclusion that 24.3 hours spent for two briefs with thirty pages in  
11 total were "excessive, redundant, or otherwise unnecessary."  
12 Hensley, 461 US at 434. The hourly rate requested by Sackett  
13 reflects no increase due to his expertise in the area of social  
14 security law. Doc #22, Attachment 1 ¶3. More important, each  
15 social security case requires "a careful application of the law to  
16 the testimony and documentary evidence, which must be reviewed and  
17 discussed in considerable detail." Patterson v Apfel, 99 F Supp 2d  
18 1212, 1213 (C D Cal 2000). Defendant's brief contains no specifics  
19 justifying its request for reduction in attorney hours. Neither  
20 does defendant contend that plaintiff engaged in "overstaff[ing],"  
21 Hensley, 461 US at 434, or "unreasonabl[e] protract[ion] of the  
22 final resolution of the matter in controversy." INS, 496 US at 163.  
23 Accordingly, the court concludes that the number of attorney hours  
24 requested by Sackett is a reasonable amount of time for the purposes  
25 of the present case.

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IV

For the reasons stated above, the court ORDERS defendant to tender payment and reimbursement respectively made payable to plaintiff's attorney for attorney fees and costs in the amounts of \$6,500.87 and \$157.40.

IT IS SO ORDERED.



\_\_\_\_\_  
VAUGHN R WALKER  
United States District Chief Judge